

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2461 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASHBHAI MAGANJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR BA SURTI for Petitioner
MR SJ DAVE, AGP for Respondent No. 1, 3
RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/06/2000

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner has challenged the order of detention dated 3-2-2000, passed by the District Magistrate, Ahmedabad.

2. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985') by the order dated 3-2-2000 passed by the District Magistrate, Ahmedabad. It is alleged that the petitioner is a bootlegger and some cases under the provisions of Bombay Prohibition Act, 1949 have been registered against him. It is now well settled that unless the activities of a person as a bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad and Ors. reported in A.I.R. 1989 SC 491. In the instant case, there is nothing to indicate that the petitioner has indulged in any criminal activities as a bootlegger which has affected or likely to affect maintenance of public order.

3. Mr. S.J.Dave, learned Assistant Government Pleader, has opposed this petition.

4. As per the arguments of learned advocate for the petitioner, the detenu has submitted a representation to the State authority on 8-2-2000 which has neither been considered nor a copy of communication has been sent by the State authority to the detenu till date. As per the law laid down by this Court, this is a delay which has not been explained by the State. Even no affidavit has been filed either by the detaining authority or the State of Gujarat. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat and ors. reported in 2000 (1) G.L.H. 393 as under :

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever on order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority. "

5. Since no affidavit has been filed either by the detaining authority or the State and the delay has not been sufficiently explained by the State, the order of detention is illegal and the same cannot be sustained.

Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 3-2-2000 passed against the detenu is hereby quashed. The detenu-Prakashbhai Maganji Thakore is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

27-6-2000 (R.P.Dholakia, J.)

*mithabhai